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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,325	02/07/2002	Tommy W. Lewis	TOK00-037	2366

7590 12/17/2004

RANDALL J. KNUTH, P.C.  
3510-A Stellhorn Road  
Fort Wayne, IN 46815-4631

EXAMINER

SHAPIRO, JEFFERY A

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/071,325

Applicant(s)

LEWIS ET AL.

Examiner

Jeffrey A. Shapiro

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-71 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 28-71 are rejected under 35 U.S.C. 102(e) as being anticipated by Royal, Jr. et al (US 6,360,137 B1). Royal disclose the following.

As described in Claims 28-71;

- a. an agent facility (18);
- b. a fuel dispenser position (12) ;
- c. a means to receive event information from said fuel dispenser position (25, 27, 208, 210, 212, 214);

Art Unit: 3653

- e. a maintenance procedure program associated with said diagnostic test program (320);
- f. a fuel dispenser control program operatively associated with said agent facility (32 and 34);
- g. an event table, including a variable table and event-specific records (see figure 7);
- h. a processor (18, 25-27, 32, 35);
- i. a remote facility (26) disposed apart from said fuel dispenser position;

Royal, Jr. discloses the system as described in Applicant's claims. Royal, Jr. discloses a processor based server system which communicates with a forecourt controller in fuel dispensers in order to monitor said fuel dispensers for inventory and management functions as well as maintenance functions. See, for example, abstract, col. 1, lines 20-30 and 61-67, col. 2, lines 1-9, col. 7, lines 22-45, col. 8, lines 63-67, and col. 9, lines 1-17.

The claim amendments to the independent claims 28, 38, 52, 62 and 66 generally read as follows.

- j. said agent facility being configured to monitor said fuel dispenser position, analyze the monitoring results to determine allowability thereof, and

- k. direct performance of at least one operation concerning said fuel dispenser position based on the analysis results,
- l. the at least one operation including at least one of a maintenance functionality, a diagnostic functionality, and a control functionality;

Royal, as described above, illustrates in figure 7, element (322 and 324) blocks indicating a "board failure" from a diagnostic on a particular pump with a server, the server being the agent. It states in col. 8, lines 62-67 that "remote maintenance and troubleshooting is available." "The troubleshooting and monitoring aspects may be provided (blocks 322 and 324) to receive information from the control systems operating in conjunction with the servers being assessed." In order for the result "board failure" to be detected and displayed, diagnosis must be performed on said board by the software. The software performs troubleshooting (the operation performed) on the board, as stated in the previously mentioned cite. Therefore, the system of Royal can be construed to meet the newly added limitations to the independent claims. Alternatively, at the very least, in order to display a result of "board failure", it can be construed as inherent that the software must perform a test on the board with certain criteria, which, if not met, indicates failure of the board to the software, which then determines its failure and relates that information to the system in human readable format. There is no other way to obtain such a result. Therefore, Royal can be construed as anticipating Applicant's claims.

***Claim Rejections - 35 USC § 103***

Art Unit: 3653

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 28-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Royal, Jr. et al (US 6,360,137 B1) in view of Caputo (US 3,838,398). Royal disclose the following.

As described in Claims 28-71;

- a. an agent facility (18);
- b. a fuel dispenser position (12) ;
- c. a means to receive event information from said fuel dispenser position (25, 27, 208, 210, 212, 214);
- d. a diagnostic test program operatively coupled to said receive means (see figure 7, elements (320, 324));
- e. a maintenance procedure program associated with said diagnostic test program (320);
- f. a fuel dispenser control program operatively associated with said agent facility (32 and 34);
- g. an event table, including a variable table and event-specific records (see figure 7);
- h. a processor (18, 25-27, 32, 35);

- i. a remote facility (26) disposed apart from said fuel dispenser position;

Royal, Jr. discloses the system as described in Applicant's claims. Royal, Jr. discloses a processor based server system which communicates with a forecourt controller in fuel dispensers in order to monitor said fuel dispensers for inventory and management functions as well as maintenance functions. See, for example, abstract, col. 1, lines 20-30 and 61-67, col. 2, lines 1-9, col. 7, lines 22-45, col. 8, lines 63-67, and col. 9, lines 1-17.

The claim amendments to the independent claims 28, 38, 52, 62 and 66 generally read as follows.

- j. said agent facility being configured to monitor said fuel dispenser position, analyze the monitoring results to determine allowability thereof, and
- k. direct performance of at least one operation concerning said fuel dispenser position based on the analysis results,
- l. the at least one operation including at least one of a maintenance functionality, a diagnostic functionality, and a control functionality;

Royal, as described above, illustrates in figure 7, element (322 and 324) blocks indicating a "board failure" from a diagnostic on a particular pump with a server, the server being the agent. It states in col. 8, lines 62-67 that "remote maintenance and

troubleshooting is available.” “The troubleshooting and monitoring aspects may be provided (blocks 322 and 324) to receive information from the control systems operating in conjunction with the servers being assessed.”

Royal does not expressly disclose, but Caputo discloses software that performs maintenance and diagnostics on a particular junction switch of a communications circuit. See Caputo, col. 10, lines 44-60.

Both Royal and Caputo are considered to be analogous art, because Royal discloses a software and electronic control-based fuel pump system and Caputo discloses use of maintenance and diagnostics software to diagnose and fix electronic circuit failures.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have used the maintenance and diagnostic software of Caputo to determine the “allowability” of the electronic control circuitry of Royal’s pumps, performing troubleshooting and maintenance on said circuitry through the software.

The suggestion/motivation would have been to detect problems with the circuitry.

### ***Response to Arguments***

5. Applicant’s arguments filed 10/7/04 have been fully considered but they are not persuasive. Applicant asserts that Royal does not apply to his claims because server (18) cannot be construed as a software agent. However, Applicant’s independent claims describe “an agent facility operatively associated with said fuel dispenser position. There is no structural limitation in the claims which prevents the interpretation



Art Unit: 3653

of "an agent" to broadly include any number of combinations of circuitry and software.

The newly added limitations only refer to the functions of said agent. As delineated above, Royal can be construed as anticipating Applicant's independent claims, or in the alternative, as being obvious in view of Caputo's teaching of using maintenance/diagnosis software to perform tests on Royal's circuitry. Therefore, Claims 28-71 remain rejected.

### ***Conclusion***

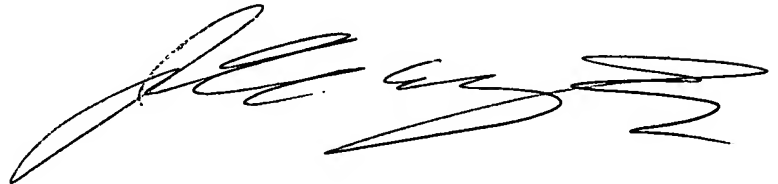
6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

(703)308-3423. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (703)306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Shapiro  
Examiner  
Art Unit 3653

December 13, 2004



DONALD P. WALSH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600